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**KARTIK PUROSOTHMEN v. MOHAMAD FERDAUS
MOHAMAD ASRI & ORS**

HIGH COURT MALAYA, IPOH
ABDUL WAHAB MOHAMED J
[WRIT SUMMONS NO: AA-21NCVC-6-04-2022]

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24 FEBRUARY 2025

Abstract – *The authorities in charge of detention, in this case, the prison authorities, owed a duty of care to the inmates in ensuring their health and safety, including access to adequate medical care. Any requests for medical attention must be carefully considered and given attention to and ought not to be construed as trivial. The authorities also have the duty to ensure that no physical harm is inflicted upon the persons under detention. There is a general duty on the detaining authorities to ensure that no violence or abuse is caused to any persons under detention, either by the detaining authorities or other inmates.*

TORT: Damages – Claim for – Assault and battery – Claim by former prisoner for personal injuries sustained during incarceration – Permanent loss of vision on one eye – Whether wrongful physical act could constitute battery if harm unintended – Whether application of some form of contact sufficient – Whether absence of intention absolves wrongdoer of liability for battery – Whether causal link established

TORT: Damages – Claim for – Claim by former prisoner for personal injuries sustained during incarceration – Permanent loss of vision on one eye – Appropriate sum under Compendium of Personal Injury Awards – Whether discharged burden to prove entitlement to special damages – Whether prison authorities grossly negligent in duty to assess seriousness of prisoner’s injuries – Appropriate sum of aggravated damages – Whether prison authorities acted with malice – Whether award of exemplary damages justified

H TORT: *Negligence – Duty of care – Claim by former prisoner for personal injuries sustained during incarceration – Permanent loss of vision on one eye – Whether prison authorities owed duty to ensure prisoner received immediate and competent medical attention – Whether failure amounted to negligence – Delay in providing immediate transfer to hospital and lack of appropriate post-operative care – Whether led to second injury – Whether prison authorities and Government liable for negligence*

TORT: Vicarious liability – Liability of Government – Prison officers – Charged with maintaining order, discipline and security within prison – Prison officers caused harm to prisoner and delayed in providing proper medical treatment – Whether prison officer acted within scope of duties – Whether prison authorities,

Government and Ministry responsible for actions of prison officer – Whether prison authorities owed duty of care towards inmates – Whether vicarious liability established

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This claim for damages was initiated by the plaintiff, a former prisoner, for personal injuries allegedly sustained during his incarceration at the prison. The defendants were: (i) an officer at the prison ('first defendant'); and (ii) the head of the prison, the General Commissioner of Prisons, the Malaysian Government and the Ministry of Home Affairs ('second to fifth defendants'), who were sued vicariously for the alleged failures within the prison system. The facts revealed that during the final session of a muster session involving approximately 1,000 prisoners, the prison officers were approached by the prisoners, including the plaintiff, to request for painkillers/paracetamol. The prison officers informed the prisoners that the medicine was running out of stock and the prisoners were asked to give their room numbers for the medicine to be given later. Dissatisfied, the prisoners, including the plaintiff started to create a commotion in front of the prison officers, including the first defendant. When the first defendant ordered the prisoners to return to their respective cells, he heard the prisoners, including the plaintiff, use abusive language towards the prison officers. The first defendant reprimanded the prisoners and claimed to have accidentally threw an empty medicine bottle towards the entrance to the prisoners' cells. The bottle struck the plaintiff in the face with considerable force, causing his spectacles to shatter and resulting in a severe injury to his right eye. The plaintiff, being in acute pain and bleeding profusely from his injured eye, was treated at the prison clinic by an assistant medical officer rather than a qualified doctor. The plaintiff claimed that, despite his pleas for urgent transfer to a hospital, he was merely prescribed eye drops and returned to his cell, where his condition was left untreated and unmonitored, leading to its further deterioration. Two days after the incident, the plaintiff was taken to Tapah Hospital, and the following day, he was transferred to Teluk Intan Hospital, where he underwent surgical intervention. After the surgery, he was returned to a regular prison cell without any special accommodations for his recovery, leading to a second incident, in which, he fell and caused further injury to his eye. As a result of the injuries, the plaintiff suffered permanent loss of vision in his right eye, with a reported deterioration of 75% to 80%. He had also been diagnosed with glaucoma. Beyond his physical injuries, the plaintiff averred that he had endured profound psychological harm, including depression and a diminished quality of life, stemming from the events. The issues for the court's determination were: (i) whether the first defendant committed the torts of assault and battery against the plaintiff; (ii) whether the defendants, individually or collectively, were negligent in failing to provide the plaintiff with timely and adequate medical treatment; (iii) whether the acts or omissions of the defendants

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- A constituted a violation of the plaintiff's fundamental rights as a prisoner;
(iv) the extent to which the plaintiff's physical and psychological injuries
were caused or exacerbated by the defendants' conduct or omissions;
(v) whether the second to fifth defendants were vicariously liable for the acts
and omissions of the first defendant and other prison staffs; and (vi) the
B appropriate quantum and categories of damages, if any, to which the plaintiff
was entitled.

Held (finding in favour of plaintiff on issues of negligence and vicarious liability and allowing claims for general damages and aggravated damages; dismissing claims for special damages and exemplary damages):

- C (1) In battery, the intent does not necessarily mean an intention to harm but
rather an intention to apply some form of contact. Even if the harm is
unintended, the act itself can still constitute battery if it involves a
wrongful physical act. Although the first defendant maintained that the
D bottle that he threw was empty and was not directed at the plaintiff, the
fact remained that: (i) the bottle was thrown in a setting where the
plaintiff and other prisoners were present; and (ii) the bottle, regardless
of its content, caused the plaintiff's glasses to shatter, resulting in serious
injury. The first defendant's argument that the act was unintentional did
not absolve him of liability for battery. The fact that the injury occurred
E immediately after the bottle was thrown and that the first defendant
admitted to throwing it created a strong causal link between the act of
throwing and the resulting injury. (paras 19, 20, 21, & 26)
- (2) The plaintiff, being a prisoner under the care of the prison authorities,
was owed a duty of care by the defendants to provide reasonable and
F appropriate medical treatment. Given the serious nature of the plaintiff's
injury, the defendants had a heightened duty to ensure immediate and
competent medical attention. The failure to recognise the urgency of the
plaintiff's injury and provide immediate transfer to a hospital constituted
negligence. The delay in providing immediate hospital care likely
G contributed to the development of glaucoma and the worsening of the
plaintiff's vision. The lack of appropriate post-operative care directly
led to the plaintiff's fall and the need for a second surgery. Had the
defendants taken proper precautions and provided a safe environment,
the second injury could have been avoided. Thus, the defendants were
H liable for negligence in failing to provide reasonable medical treatment,
and this failure directly contributed to the plaintiff's injuries. (paras 31,
32, 34, 35 & 37)
- (3) The scope of the rights enshrined under art. 5(1) of the FC extend
beyond mere physical survival and to include the right to adequate
I medical care and treatment, particularly for individuals in State custody,
such as prisoners. The plaintiff, as a prisoner under the care of the State,

was entirely dependent on the prison authorities for his medical needs. The delay in providing appropriate medical treatment, combined with the lack of care provided during the plaintiff's recovery, amounted to a deprivation of his right to life and personal liberty. Additionally, the failure to provide a safe and accommodating environment post-surgery resulted in an inhumane and degrading treatment, further violating the plaintiff's constitutional rights. Accordingly, the defendants were liable for the violation of the plaintiff's fundamental rights under art. 5(1) of the FC and were responsible for the damages arising from their actions. (paras 39, 41, 48 & 49)

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- (4) The plaintiff's physical injuries were directly caused by the first defendant's actions, and the subsequent negligence in the delayed provision of medical treatment worsened the outcome, thus establishing a clear link between the defendants' conduct and the plaintiff's physical harm. However, the plaintiff had not produced any medical reports, psychological evaluations, or testimony from expert witnesses, such as a psychiatrist or psychologist, to support his assertion that he has been suffering from depression or other mental health issues. In tort claims, psychological harm, such as emotional distress, must be proven through credible evidence. The plaintiff's claim for mental and emotional distress was unsubstantiated. Hence, while the plaintiff was entitled to compensation for his physical injuries, including the permanent vision impairment and ongoing need for medical treatment, his claim for mental and emotional distress was dismissed for lack of evidence. (paras 53, 54, 56 & 57)

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- (5) Prison officers are charged with maintaining order, discipline and security within the prison environment. The first defendant's actions, whether intentional or negligent, were taken during the performance of his duties, which included managing the prisoners under his supervision. His actions were closely connected to his duties as a prison officer, even though his behaviour was inappropriate and led to harm. As the first defendant was acting within the scope of his employment when he caused the plaintiff's injuries, the prison authorities, the Government and the Ministry must bear responsibility for those actions. Additionally, prison authorities have a duty of care towards inmates, including providing necessary medical treatment in a timely manner. The failure to take immediate steps to ensure the plaintiff received proper medical attention and the subsequent inadequate post-surgical care directly contributed to the plaintiff's worsening condition, for which the prison authorities were vicariously liable. (paras 63-68)

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- (6) General damages are intended to compensate the plaintiff for actual loss and suffering. Medical reports tendered by both parties supported the fact that the plaintiff had sustained a permanent loss of vision in his right eye, which had drastically affected his daily life. Further, the plaintiff's

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- A glaucoma condition required ongoing treatment, and there was no prospect of recovery. The range of awards for vision loss is set out in the Compendium of Personal Injury Awards and the plaintiff's injury, which involved a 75% to 80% loss of vision, fell at the upper end of this range. Hence, a sum of RM80,000 was appropriate to compensate the plaintiff for his pain and suffering, loss of vision, and the permanent impact on his daily life. (paras 75-78 & 79)
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- (7) The plaintiff's claim for future medical costs was based on the assertion that he would need ongoing glaucoma treatment for the rest of his life. Glaucoma, being a permanent condition, requires regular medication to prevent further deterioration of vision. However, the plaintiff had failed to discharge the burden of proving his entitlement to special damages for future medical costs. No evidence had been presented to demonstrate that the plaintiff had incurred or would incur such expenses, nor had any expert testimony been provided to support the necessity of private treatment. Furthermore, the availability of free medical care through Government hospitals, which was not disputed, negated the need for the plaintiff to incur expenses in the private sector. The plaintiff's claim for special damages in the sum of RM28,800 for future medical costs was dismissed. (paras 86 & 90-93)
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- E (8) The defendants' conduct, particularly the decision to send the plaintiff back to a regular prison cell with inadequate facilities after his surgery, suggested an indifference to his post-surgery recovery. This resulted in the plaintiff falling and sustaining further injury to his already damaged eye. The conduct of the defendants, particularly the prison authorities, demonstrated a callous disregard for the plaintiff's wellbeing. The prison medical staffs were either grossly negligent in their duty to assess the seriousness of the plaintiff's injuries or failed to act promptly and appropriately in light of the visible trauma the plaintiff had sustained. In light of the egregious nature of the defendants' conduct, an award of RM80,000 was appropriate as aggravated damages to reflect the additional distress and suffering caused by the defendants. (paras 103-104 & 110)
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- H (9) While it was clear that there was a delay in providing medical treatment, there was no evidence to suggest that the defendants acted with malice or with the intention to harm the plaintiff. The delay appeared to have been the result of poor management and oversight rather than a deliberate attempt to mistreat the plaintiff. The defendants' conduct did not meet the high threshold required for exemplary damages; it did not rise to the level of oppression or recklessness that would justify an award of exemplary damages. The plaintiff's claim for exemplary damages was thus, not justified. (paras 123-126)
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Case(s) referred to:

Ahmad Azhar Othman v. Rozana Mishun [2020] 6 CLJ 314 HC (*refd*)

Daning Laja v. KK Tuaran Majid [1993] 1 CLJ 44 HC (*refd*)

Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor [2018] 3 CLJ 427 FC (*refd*)

Dr Kok Choong Seng & Anor v. Soo Cheng Lin & Another Appeal [2017] 10 CLJ 529 FC (*refd*)

Ng Siew Kien v. Tang Eng & Ors [2006] 2 MLJ 1 (*refd*)

Popular Industries Ltd v. The Eastern Garment Manufacturing Sdn Bhd [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635 HC (*refd*)

Rahaya Salleh v. Nik Mohd Ghazali Nik Zul Azhar & Ors And Another Appeal [2022] 8 CLJ 591 CA (*refd*)

Rookes v. Barnard [1964] AC 1129 (*refd*)

Roshairree Abd Wahab v. Mejar Mustafa Omar & Ors [1997] 1 CLJ Supp 39 HC (*refd*)

Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] CLJU 500; [2017] 1 LNS 500 CA (*refd*)

Syed Idrus Syed Ahmad v. Afandi Abdul Manap & Ors [2014] CLJU 930; [2014] 1 LNS 930 HC (*refd*)

Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd [1995] 1 CLJ 15 FC (*refd*)

Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA (*refd*)

Legislation referred to:

Federal Constitution, art. 5(1)

Government Proceedings Act 1956, ss. 5, 6

Other source(s) referred to:

McGregor on Damages, Sweet & Maxwell, 18th edn, 2009, para. 8-001

For the plaintiff - Balakrishna Balaravi Pillai; M/s Krish Mano & Assocs

For the defendants - Hakim Ab Keram, Safiyyah Omar & Siti Norashikin Hassanor; SFC

Reported by S Barathi

JUDGMENT**Abdul Wahab Mohamed J:****Introduction**

[1] The plaintiff, a former prisoner, brings this claim seeking damages for personal injuries allegedly sustained during his incarceration at Tapah Prison. The incident giving rise to these proceedings occurred on 30 April 2019, during which the plaintiff contends that he suffered severe and permanent injuries due to the deliberate and negligent acts of the defendants. The defendants comprise the first defendant, an officer at the prison, and the second to fifth defendants being the head of the prison, the General Commissioner of Prisons, the Malaysian Government, and the Ministry of Home Affairs, who are sued vicariously for the alleged failures within the prison system.

A Background Facts

[2] On 30 April 2019 at approximately 6pm, a muster session was held at the Damai Block involving approximately 1,000 prisoners.

B [3] At the final session of the muster, several prisoners, including the plaintiff, came to request painkillers/paracetamol from the prison officers. At that time, the prison officers informed the prisoners that the medicine was running out of stock and the prisoners were asked to give their room numbers for the medicine to be given later.

C [4] The defendants claimed that the prisoners all including the plaintiff, were dissatisfied with the said information and started to create a commotion in front of the prison officers, including the first defendant.

D [5] The first defendant had allegedly ordered the prisoners to return to their respective cells. However, the first defendant heard the prisoners, including the plaintiff, used abusive language towards the prison officers because they were dissatisfied with the situation.

E [6] The first defendant reprimanded the prisoners and claimed to have accidentally thrown an empty medicine bottle towards the entrance to the prisoners' cells. The first defendant stated that, at that time, the plaintiff turned back and the empty medicine bottle hit the plaintiff's glasses.

F [7] The plaintiff, however, alleges that the first defendant had, with malicious intent, thrown a bottle allegedly containing urine towards him. The bottle struck the plaintiff in the face with considerable force, causing his spectacles to shatter and resulting in a severe injury to his right eye. The plaintiff maintains that this was no mere accident but an act executed with the intent to harm, evidencing malice on the part of the first defendant.

G [8] Following the incident, the plaintiff was in acute pain and bleeding profusely from his injured eye. Despite the apparent severity of his condition, he alleges that the response of the prison authorities was woefully inadequate. He was treated at the prison clinic by an assistant medical officer rather than a qualified doctor. The plaintiff claims that, despite his pleas for urgent transfer to a hospital, he was merely prescribed eye drops and returned to his cell, where his condition was left untreated and unmonitored, leading to its further deterioration.

H [9] It was not until two days after the incident, on 2 May 2019 that the plaintiff was eventually taken to Tapah Hospital. On the following day, he was transferred to Teluk Intan Hospital, where he underwent surgical intervention. The plaintiff argues that these delays in receiving specialist medical care exacerbated his injury and contributed significantly to the permanent loss of vision in his right eye. He asserts that had he been transferred to an ophthalmic specialist immediately after the incident, his prognosis would have been far less severe.

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[10] As a result of the injuries, the plaintiff now suffers permanent loss of vision in his right eye, with a reported deterioration of 75% to 80%. Furthermore, he has been diagnosed with glaucoma, a condition he alleges was either caused or aggravated by the injury and the defendants' failure to provide timely and adequate medical treatment. Beyond his physical injuries, the plaintiff avers that he has endured profound psychological harm, including depression and a diminished quality of life, stemming from the events in question.

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[11] The defendants deny the allegations of malice and negligence. They contend that the incident was entirely unintentional, asserting that a commotion among prisoners prompted the first defendant to reprimand the plaintiff and other inmates. According to the defendants, the first defendant was attempting to reprimand the prisoners when the bottle was inadvertently thrown. They further contend that the plaintiff's subsequent injuries and condition were not attributable to any failures on their part but rather to the plaintiff's own negligence in managing his health.

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[12] The defendants also maintain that the medical care provided was appropriate and proportionate to the circumstances. They argue that the prison clinic acted reasonably given the limitations inherent in a custodial environment and contend that the plaintiff's allegations regarding the necessity for immediate referral to an eye specialist are unfounded.

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[13] In these proceedings, the plaintiff claims various heads of damages: general damages for his physical injuries, special damages for future medical expenses related to his glaucoma treatment, aggravated damages for the defendants' conduct, and exemplary damages for the alleged breach of his rights as a prisoner.

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Issues To Be Determined

[14] The issues requiring determination by this court are as follows:

- (i) whether the first defendant committed the torts of assault and battery against the plaintiff;
- (ii) whether the defendants, individually or collectively, were negligent in failing to provide the plaintiff with timely and adequate medical treatment;
- (iii) whether the acts or omissions of the defendants constituted a violation of the plaintiff's fundamental rights as a prisoner;
- (iv) the extent to which the plaintiff's physical and psychological injuries were caused or exacerbated by the defendants' conduct or omissions;
- (v) whether the second to fifth defendants are vicariously liable for the acts and omissions of the first defendant and other prison staff; and
- (vi) the appropriate quantum and categories of damages, if any, to which the plaintiff is entitled.

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A (i) *Whether The First Defendant Committed Assault And Battery*

[15] The first defendant admits to throwing a bottle but claims that it was not done intentionally to harm the plaintiff. According to the first defendant, he threw an empty medicine bottle towards the entrance of the prisoners' cells to reprimand the prisoners, who were causing a commotion and behaving disrespectfully. The first defendant asserts that the bottle hit the plaintiff's glasses by accident, and any harm caused was unintentional.

[16] Battery, in tort law, is the intentional and unlawful application of force to another person. The elements that must be established for a successful claim of battery are:

[17] In *Daning Laja v. KK Tuaran Majid* [1993] 1 CLJ 44, at 47, Ian HC Chin JC (as he then was) has decided as follows in HC:

The plaintiff's claim is based on the tort of assault and battery which are defined in *Halsbury's Law of England*, 4th Edn., paras 1310 and 1311 as follows:

1310. Assault is an intentional offer of force or violence to the person of another ...

1311. A battery is an act of the defendant which directly and either intentionally or negligently causes some physical contact with the person of the plaintiff without the plaintiff's consent. The term "assault" is commonly used to include battery.

[18] The case has also been referred to in the case of *Ahmad Azhar Othman v. Rozana Misbun* [2020] 6 CLJ 314 Shah Alam High Court through Wong Kian Kheong J decided:

[40] Based on the above edition of "*Halsbury's Law of England*", a plaintiff alleging battery by a defendant has to prove the following three elements of the tort (three elements):

(i) the defendant has committed an act (act) which directly causes physical contact with the plaintiff;

(ii) the act is done without the plaintiff's consent; and

(iii) the act is done intentionally or negligently by the defendant.

[19] In battery, the intent does not necessarily mean an intention to harm but rather an intention to apply some form of contact. Even if the harm is unintended, the act itself can still constitute battery if it involves a wrongful physical act. Any unwanted touching can amount to battery, regardless of the intent to cause harm.

[20] The first defendant's admission that he threw a bottle is a critical piece of evidence. While he maintains that the bottle was empty and not directed at the plaintiff, the fact remains that:

- (i) the bottle was thrown in a setting where the plaintiff and other prisoners were present; and A
- (ii) the bottle, regardless of its content, caused the plaintiff's glasses to shatter, resulting in serious injury.

[21] The first defendant's argument that the act was unintentional does not absolve him of liability for battery. Under tort law, the focus is on the intent to act, not the intent to harm. The intention to touch or apply force, even in a playful or accidental manner, could constitute battery if harm results. B

[22] In the present case, the first defendant's action in throwing the bottle indicates his intention to apply force, even if the specific result (injury) was not intended. C

[23] The plaintiff's evidence shows that the bottle strike caused his glasses to break, and glass shards embedded in his eye. Medical reports corroborating the severity of the injury (loss of vision, development of glaucoma) further support the plaintiff's claim that the contact was harmful. The nature and extent of the injury suggest that the bottle was thrown with considerable force, contradicting the first defendant's claim that it was an "accidental" and harmless act. D

[24] Here, the first defendant's decision to throw a bottle in the direction of the prisoners constitutes an intentional act that foreseeably could result in harm. E

[25] Although the first defendant claims he intended to merely reprimand the prisoners, the manner in which the bottle was thrown and the fact that it struck the plaintiff's face demonstrates that there was, at minimum, reckless disregard for the safety of those in close proximity. F

[26] The fact that the injury occurred immediately after the bottle was thrown and that the first defendant admits to throwing it creates a strong causal link between the act of throwing and the resulting injury. This meets the threshold for battery as established in the case of *Daning Laja (supra)*. G

[27] The evidence strongly supports the plaintiff's claim that the first defendant committed battery. The plaintiff has successfully demonstrated that the first defendant's actions were intentional and resulted in unlawful and harmful contact, thus meeting the criteria for battery. H

(ii) *Whether the Defendants Were Negligent In Providing Appropriate Medical Treatment*

[28] The plaintiff claims that after the incident on 30 April 2019, where a bottle thrown by the first defendant shattered his glasses and caused serious eye injury, the defendants failed to provide immediate and proper medical treatment. The plaintiff had alleged, *inter alia*, as follows: I

- A (i) he was taken to the prison clinic, where only an assistant medical officer (not a certified doctor) treated him;
- (ii) despite severe bleeding and pain, he was not taken to the hospital until two days later, on 2 May 2019;
- B (iii) surgery was further delayed at the hospital because he had not been instructed to fast, resulting in surgery only on 3 May 2019; and
- (iv) after his surgery, he was returned to a regular prison cell without any special accommodations for his recovery, leading to a second accident in which he fell and caused further injury to his eye.
- C [29] The plaintiff argues that the defendants were negligent in delaying his treatment and failing to provide necessary post-surgical care, which exacerbated his condition and contributed to his long-term vision problems and physical suffering.
- D [30] The defendants contend that medical care was provided to the plaintiff in a timely manner, *albeit* within the prison clinic. They argue that the plaintiff was eventually taken to Tapah Hospital and then Teluk Intan Hospital, where his surgery was performed. They claim that his vision improved post-surgery to 6/9 with reflection, and the subsequent deterioration was due to the plaintiff's own negligence after surgery,
- E particularly his fall in the prison cell.
- [31] The plaintiff, being a prisoner under the care of the prison authorities, was owed a duty of care by the defendants to provide reasonable and appropriate medical treatment. The duty to ensure the health and safety of
- F prisoners, including access to adequate medical care, is well-established as highlighted in the recent Court of Appeal decision in *Rahaya Salleh v. Nik Mohd Ghazali Nik Zul Azhar & Ors And Another Appeal* [2022] 8 CLJ 591 where it was held as follows:
- G [48] We must say at once that there is duty of care on the part of the detaining authority to ensure the welfare and well-being of the person under detention, in the physical as well as the mental aspects. That must, in our considered view, include the duty to ensure that medical treatment or care is available and to be provided readily to the detained person in a given circumstance. This would necessarily mean that the detaining authority must be sensitive or not take an attitude of careless to the needs
- H of the detained person. Every cry of pain cannot be brushed aside as being a silly cry for attention. It could well be an actual cry of pain. The fact that a person is being detained either in prison (serving a sentence) or in lock up (pursuant to a remand order) does not and cannot be construed as giving the detaining authority to trifle with the said persons due and constitutional right to life, in particular, of the right to be treated with
- I dignity. There is a duty on the part of the detaining authority to ensure that the detained person be given a decent meals and medicines and be

given medical treatment by competent medical personnel and medical aid at the earliest opportunity when required. He must also not be denied of his medicines. The other facet of duty of the detaining authority and its personnel is to ensure that no physical harm is inflicted upon the person detained. Such action of assault or battery cannot be legitimised under any name or guise. Any such action, if committed will tantamount to the strangulation of the rule of law and an insult to the very essence of human dignity and the very office that the perpetrators occupy. We must say in no uncertain terms that brutality is not acceptable and has no part in any criminal investigation and death in custody is an anathema or antithetical to humanity. There is a general duty on the part of the detaining authority to protect and ensure that no violence or abuse is visited upon by the detained person by anyone including the detaining authority itself, as the gaoler is not to be oppressor for that is the story of the pagans and not the accomplished story of humanity.

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[32] Given the serious nature of the plaintiff's injury (a bleeding eye with glass shards embedded in it), the defendants had a heightened duty to ensure immediate and competent medical attention.

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[33] The evidence suggests several key breaches in the duty of care owed to the plaintiff as follows:

(i) initial treatment in prison:

(a) the plaintiff was taken to the prison clinic, where only an assistant medical officer (not a doctor) attended to him. Despite the severity of his injury, he was not transferred to a hospital until two days later. This delay in obtaining proper medical care is significant, as the plaintiff's injury required specialised treatment, likely from an ophthalmologist;

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(b) the failure to provide immediate hospital care for a serious injury such as this constitutes a breach of the duty to provide timely medical assistance. The prison clinic, staffed by a non-specialist, was not equipped to handle the severity of the plaintiff's condition.

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(ii) delay in surgery:

(a) the plaintiff was finally transferred to Teluk Intan Hospital on 2 May 2019, but surgery could not be performed that day because he had not been instructed to fast. This further delay in surgery three days after the incident caused unnecessary suffering and potentially worsened the plaintiff's condition;

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(b) the medical guidelines or protocols regarding fasting before surgery should have been communicated early enough to avoid further delays. Failure to do so demonstrates inadequate coordination in the provision of medical care, which could constitute another breach.

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- A (iii) post-surgical care;
- (a) after surgery, the plaintiff was returned to a regular prison cell, without any special accommodations to protect his eye following major surgery. This resulted in him slipping and falling, hitting the injured eye again, and requiring a second surgery;
- B (b) the lack of appropriate post-operative care facilities for a patient recovering from eye surgery is a significant breach of the duty of care. The failure to provide a safer environment after surgery shows negligence in providing ongoing care.
- C [34] In this case, the failure to recognise the urgency of the plaintiff's injury and provide immediate transfer to a hospital constitutes negligence. The delay in providing immediate hospital care likely contributed to the development of glaucoma and the worsening of the plaintiff's vision.
- D [35] The lack of appropriate post-operative care directly led to the plaintiff's fall and the need for a second surgery. Had the defendants taken proper precautions and provided a safe environment, the second injury could have been avoided.
- E [36] Therefore, the plaintiff's prolonged suffering and subsequent eye damage can be causally linked to the defendants' failure to provide prompt medical treatment and appropriate post-surgical care.
- [37] Thus, the defendants are liable for negligence in failing to provide reasonable medical treatment, and this failure directly contributed to the plaintiff's injuries.
- F (iii) *Whether The Actions Of The Defendants Violated The Plaintiff's Constitutional Rights*
- G [38] The third issue before this court is whether the actions of the defendants, in their handling of the plaintiff's injury and subsequent medical treatment, amounted to a violation of the plaintiff's fundamental rights as enshrined in the Federal Constitution. Specifically, the plaintiff asserts that the delay in providing medical care, combined with the lack of proper facilities and treatment post-surgery, infringed his constitutional rights to life and personal liberty under art. 5(1) of the Federal Constitution, as well as his right to be free from inhumane or degrading treatment. The defendants deny that their actions constitute any violation of the plaintiff's constitutional rights and maintain that they acted within the bounds of the law.
- H [39] Article 5(1) of the Federal Constitution provides that "no person shall be deprived of his life or personal liberty save in accordance with law." The scope of this right has been interpreted by the courts to extend beyond mere physical survival and to include the right to adequate medical care and treatment, particularly for individuals in state custody, such as prisoners.
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[40] In the case of *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771; [1996] 1 MLJ 261, the Court of Appeal held that the right to life under art. 5(1) must be interpreted broadly to include the right to live with dignity. A

[41] The plaintiff, as a prisoner under the care of the State, was entirely dependent on the prison authorities for his medical needs. The evidence indicates that after the plaintiff sustained a serious eye injury on 30 April 2019, he was provided only limited medical assistance at the prison clinic, which was staffed by an assistant medical officer rather than a certified doctor. Despite the gravity of his injury, he was not transferred to a hospital until two days later, on 2 May 2019. The delay in receiving specialised medical attention raises serious concerns about whether the plaintiff's right to life and dignity, as interpreted under art. 5(1), was respected. B C

[42] The evidence shows that the plaintiff was in significant pain and distress following the incident. His eye was bleeding, and shards of glass were embedded in his eye, yet he was not provided immediate access to a hospital or a specialist. Instead, he was given basic treatment at the prison clinic, which lacked the necessary facilities and expertise to address such a severe injury. D

[43] The plaintiff contends that had he been taken to a hospital immediately, his chances of preserving his eyesight and avoiding further complications, such as glaucoma, would have been significantly higher. The delay in transferring him to the hospital and the subsequent delay in surgery (due to the failure to prepare him for surgery by ensuring that he fasted) demonstrate a lack of urgency and care on the part of the defendants. E

[44] The plaintiff further argues that the treatment he received following his surgery amounted to inhumane or degrading treatment. After undergoing surgery on 3 May 2019, the plaintiff was returned to a normal prison cell, without any special accommodations to account for his recovery needs. The evidence shows that he slipped and fell in the cell, hitting his injured eye, which resulted in the need for a second surgery on 20 June 2019. F G

[45] I find it pertinent to highlight the importance of safeguarding the right to life and dignity, particularly when a person is under the custody of the State. Any action or inaction that deprives a person of necessary medical care may amount to a violation of their constitutional rights. In the present case, the delay in providing appropriate medical treatment raises the question of whether the defendants' actions were in line with their constitutional obligations. H

[46] The evidence clearly indicates that the plaintiff was placed in conditions that were not suitable for someone recovering from eye surgery. The failure to provide appropriate accommodations or to monitor his recovery in a safe environment falls below the standard expected of the I

A defendants. The resulting fall and the need for further medical intervention could have been avoided had the defendants taken appropriate steps to ensure the plaintiff's well-being during his recovery period.

B [47] The plaintiff has suffered significant harm as a result of the defendants' actions. The delay in providing medical treatment likely contributed to the plaintiff's long-term vision impairment, including the development of glaucoma. The second injury, caused by the plaintiff's fall in his prison cell, further exacerbated his condition and required additional medical intervention. This court finds that the actions (or inactions) of the defendants directly contributed to the plaintiff's physical and mental suffering.

C [48] In light of the evidence and legal principles discussed above, this court finds that the defendants violated the plaintiff's fundamental rights under art. 5(1) of the Federal Constitution. The delay in providing appropriate medical treatment, combined with the lack of care provided during the plaintiff's recovery, amounted to a deprivation of his right to life and personal liberty. Additionally, the failure to provide a safe and accommodating environment post-surgery resulted in inhumane and degrading treatment, further violating the plaintiff's constitutional rights.

E [49] Accordingly, this court holds that the defendants are liable for the violation of the plaintiff's fundamental rights and are responsible for the damages arising from their actions.

(iv) Whether The Plaintiff Suffered Physical And Mental Injuries As A Result Of The Defendants' Actions

F [50] The fourth issue for consideration is whether the plaintiff has suffered both physical and mental injuries as a direct result of the defendants' actions. The plaintiff alleges that he sustained severe physical injuries to his right eye following the incident on 30 April 2019 and, additionally, that he suffers from ongoing mental distress, including depression, due to the impact of his injuries. The defendants, however, contest the plaintiff's claim of mental distress, pointing out that no evidence, medical documentation, or expert testimony was presented to substantiate this claim.

H [51] The physical injury suffered by the plaintiff is not in dispute. It is established through evidence that the plaintiff's right eye was seriously injured when the first defendant threw an object that caused the plaintiff's glasses to shatter, with shards of glass embedding in his eye. The plaintiff subsequently underwent surgery, but despite medical intervention, the injury resulted in permanent vision loss and the onset of glaucoma, a chronic eye condition that cannot be reversed.

I [52] The medical evidence, including reports from the hospitals where the plaintiff received treatment, confirms that the injury to his right eye was severe. Although the plaintiff's vision initially improved slightly

post-surgery, the long-term consequences of the injury most notably the development of glaucoma have severely impaired his ability to see, and he is now dependent on follow-up care to manage the condition.

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[53] Based on this evidence, the court finds that the plaintiff's physical injuries were directly caused by the first defendant's actions, and the subsequent negligence in the delayed provision of medical treatment worsened the outcome. This establishes a clear link between the defendants' conduct and the plaintiff's physical harm.

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[54] Turning to the plaintiff's claim of mental and emotional distress, it is important to note that in tort claims, psychological harm, such as emotional distress, must be proven through credible evidence. The onus is on the plaintiff to provide medical documentation or expert testimony to substantiate such claims. In the present case, the plaintiff has not produced any medical reports, psychological evaluations, or testimony from expert witnesses, such as a psychiatrist or psychologist, to support his assertion that he has been suffering from depression or other mental health issues.

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[55] Claims of mental distress must be substantiated by concrete evidence, typically in the form of medical records or expert testimony. Without such evidence, a claim for mental distress cannot succeed. Claims for psychological harm must be supported by expert psychiatric or psychological evidence to be credible and compensable. Reference was made to the case of *Syed Idrus Syed Ahmad v. Afandi Abdul Manap & Ors* [2014] CLJU 930; [2014] 1 LNS 930; [2015] 10 MLJ 390 where the High Court had held as follows:

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84. For item (a) damages due to trauma, and mental health instability, pain and suffering including insomnia, mental disorders and medical expenses, the Plaintiff did not prove the health problems that he had suffered by producing medical evidence pertaining to his current health status to the Court. The Plaintiff merely made allegations such as he was on the point of collapse when he went to the police station to sign the bond for his appearance in Court, on 12-7-2010 he was breathless, and had palpitations and was shaking all over in Court, and finally the stress and strain has badly affected his health such as having nightmares and shakes. Hence without these allegations being proven by medical evidence, they remained at best mere allegations.

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[56] In this case, the plaintiff has failed to provide any evidence to support his claim of mental distress. No documents or expert witnesses were called upon to establish that the plaintiff was diagnosed with depression or any other psychological condition resulting from the incident. Therefore, the court must conclude that the plaintiff's claim for mental and emotional distress is unsubstantiated.

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A [57] In light of the absence of evidence to prove mental distress, the court cannot conclude that the plaintiff has suffered any compensable psychological harm as a result of the defendants' actions. The plaintiff has not discharged the burden of proof required to establish that his mental health has been negatively impacted by the incident. Without credible evidence, the claim for mental distress must fail.

B [58] While the plaintiff has clearly suffered significant physical injuries, which the court accepts as proven, there is no evidence to support the claim that the plaintiff has suffered from mental or emotional distress. The plaintiff's failure to produce expert testimony or medical documentation means that this aspect of the claim cannot be upheld.

C [59] Therefore, this court finds that while the plaintiff is entitled to compensation for his physical injuries, including the permanent vision impairment and ongoing need for medical treatment, his claim for mental and emotional distress is dismissed for lack of evidence.

D (v) *Vicarious Liability Of The Second To Fifth Defendants*

E [60] The next issue to consider is the vicarious liability of the prison authorities, including the Prison Head, the General Commissioner of the Prison, the Government, and the Ministry of Home Affairs, for the actions of the first defendant, a prison officer. Vicarious liability arises when one party (usually an employer) is held responsible for the torts committed by another (usually an employee) in the course of their employment. The plaintiff contends that the first defendant, acting within the scope of his employment, caused harm to the plaintiff and that the defendants, as his superiors and employers, should be held liable.

F [61] It trite law that an employer is vicariously liable for acts actually authorised by the employer or which are not authorised by the employer but which are so connected with acts which he has authorised that they may rightly be regarded as modes although improper modes of doing them as held in the case of *Roshairree Abd Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39 where James Foong J (as he then was) had stated as follows:

G But a master, as opposed to an employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised that they may rightly be regarded as modes – although improper modes – of doing them. *Canadian Pacific Railway Co v. Lockhart* [1942] AC 591 @ 599, which adopted a passage from Salmond on Torts. In turn, it is accepted by our Malaysian Courts in *Keppel Bus Co. Ltd. v. Saad bin Ahmad* [1974] 1 LNS 62; [1972] 2 MLJ 121 which was affirmed by the Privy Council in [1974] 1 MLJ 191.

H In other words, a master is responsible not merely for what he authorises his servants to do, but also for the way in which he does it. On the other hand, if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an

independent act, the master is not responsible for in such a case the servant is not acting in the course of his employment, but has gone outside of it.

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By this provision, the third defendants claim that the practice of such activities is and was unauthorised and will not be tolerated.

Though this may be so, this court has still to decide based on the entire evidence whether the acts of the first and second defendants were carried out while they were in the course of their duties, to the extent that they were so connected with their authorised duties that they may be regarded as a mode of doing them.

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Though the first defendant's acts of assault were unauthorised by the third defendant, they were carried out during the normal course of duty of the first defendant.

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Such being the case, his unauthorised acts have become so connected with his authorised acts that this court finds them to have become "modes – although improper modes – of doing them". For this, the third defendant must be held vicariously liable for the unlawful actions of this defendant.

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[62] Sections 5 and 6 of the Government Proceedings Act 1956 provides:

5. Liability of the Government in tort.

Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

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6. Limits of liability of the Government.

(2) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

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(3) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings against the Government had been proceedings against such officer.

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A (4) No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

B (5) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid.

C (6) For the purposes of subsection (4) the expression “appropriate financial officer” means, in respect of the Federal Government, the Minister of Finance, and in respect of the Government of a State, the State Financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.

E [63] In the context of prison authorities, it is crucial to consider whether the first defendant was acting within the scope of his duties as a prison officer when the incident occurred. Prison officers are charged with maintaining order, discipline, and security within the prison environment. The plaintiff alleges that the first defendant’s actions were intentional and reckless, going beyond what would be considered the normal course of employment for a prison officer.

F [64] The evidence presented in this case shows that the first defendant was indeed acting in his official capacity as a prison officer when the incident occurred. His actions, whether intentional or negligent, were taken during the performance of his duties, which included managing the prisoners under his supervision. Although the defendants argue that the bottle was thrown accidentally, the act occurred in the course of the first defendant reprimanding prisoners and trying to control the situation in the prison.

G [65] Given this context, it is clear that the first defendant’s actions were closely connected to his duties as a prison officer, even though his behaviour was inappropriate and led to harm. Employers, including the Government, can be held vicariously liable for the negligent or reckless acts of their employees committed during the course of employment, even if those acts exceed the employee’s proper scope of authority.

H [66] In this case, the second to fifth defendants can all be vicariously liable for the first defendant’s actions. These authorities have a responsibility to ensure that their employees perform their duties in a manner that does not cause harm to others, including prisoners under their care. As the first defendant was acting within the scope of his employment when he caused the plaintiff’s injuries, the prison authorities, the Government, and the Ministry must bear responsibility for those actions.

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[67] Additionally, the plaintiff argues that the prison authorities, including the Prison Head and other officials, were negligent in failing to provide timely medical treatment following the incident. The delay in seeking appropriate medical care, which resulted in further deterioration of the plaintiff's eye condition, falls under the responsibility of the prison administration. Prison authorities have a duty of care towards inmates, including providing necessary medical treatment in a timely manner.

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[68] The failure to take immediate steps to ensure the plaintiff received proper medical attention and the subsequent inadequate post-surgical care directly contributed to the plaintiff's worsening condition, for which the prison authorities are vicariously liable.

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Damages

General Damages

[69] The plaintiff has claimed general damages for the injuries sustained as a result of the incident on 30 April 2019, which caused severe injury to his right eye. General damages are intended to compensate for non-pecuniary losses such as pain and suffering, loss of amenity, and permanent disability.

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[70] The plaintiff suffered a significant injury to his right eye after the first defendant threw a bottle of urine, which resulted in the plaintiff's glasses shattering and shards of glass cutting into his eye. Medical evidence confirmed that the plaintiff sustained severe trauma to the eye, leading to a permanent loss of vision between 75% and 80%. The plaintiff further developed glaucoma as a result of this injury, which is an incurable condition that will affect him for the rest of his life.

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[71] The plaintiff contends that this injury has caused substantial physical pain, impaired vision, and a permanent reduction in his ability to lead a normal life. He now faces lifelong complications, including the management of glaucoma, and has suffered both physical and emotional distress due to the injury and its long-term effects.

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[72] The assessment of general damages is guided by established principles in tort law, which require the court to consider the nature of the injury, its impact on the plaintiff's life, and comparable cases to determine a fair and reasonable sum. Damages awarded must reflect the seriousness of the injury and the suffering endured by the plaintiff. The court must also take into account the degree of permanent disability, as well as the future impact on the plaintiff's quality of life.

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[73] It is axiomatic that a plaintiff seeking substantial damages has the burden of proving both the fact and the amount of damages before he can recover (see the case of *Popular Industries Ltd v. The Eastern Garment Manufacturing Co Sdn Bhd* [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635; [1989] 3 MLJ 360).

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A [74] In order for the plaintiffs to be able to claim for damages, the plaintiffs must prove the damage and it is not enough to merely write down the particulars and rely on the same. *McGregor on Damages* (Sweet & Maxwell, 18th edn 2009) provides succinctly for this requirement at para. 8-001:

B A claimant claiming damages must prove his case. To justify an award of substantial damages he must satisfy the court both as to the fact of damage and as to its amount. If he satisfies the court on neither, his action will fail, or at the most he will be awarded nominal damages where a right has been infringed. If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages;

C this situation is illustrated by *Dixon v. Deveridge* and *Twyman v. Knowles*.

[75] General damages are also compensatory in nature, meaning they are intended to compensate the plaintiff for actual loss and suffering as was held in the Federal Court case of *Dr Kok Choong Seng & Anor v. Soo Cheng Lin & Another Appeal* [2017] 10 CLJ 529. The goal of awarding general damages

D is to place the plaintiff, as far as possible, in the position he would have been in had the injury not occurred, though it is recognised that some injuries, such as permanent disability, cannot be fully compensated by money alone.

[76] Medical reports tendered by both parties support the fact that the plaintiff has sustained a permanent loss of vision in his right eye. The

E defendant's expert witness, who examined the plaintiff on 14 March 2023, confirmed that the plaintiff's vision loss was between 75% and 80%. Additionally, the plaintiff's expert witness, who conducted an examination on 19 August 2022, placed the plaintiff's vision loss within the same range.

[77] The plaintiff testified that his reduced vision has drastically affected his daily life. He can no longer engage in activities that require clear vision, including reading, driving, or performing tasks that demand depth perception. Furthermore, the plaintiff's glaucoma condition requires ongoing treatment, and there is no prospect of recovery. This permanent disability

F must be taken into consideration when assessing general damages.

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[78] The range of awards for vision loss is set out in the compendium of personal injury awards, which provides guidance for cases involving similar injuries. For a vision loss of 50% to 80% in one eye, the compendium suggests an award between RM30,000 and RM72,000. The plaintiff's injury,

H which involves a 75% to 80% loss of vision, falls at the upper end of this range.

[79] Given the plaintiff's severe and permanent loss of vision, the higher end of the compendium range is appropriate in this case. The plaintiff has not only lost substantial vision in his right eye but also faces lifelong management of glaucoma, which further impairs his quality of life. The court

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finds that a sum of RM80,000 is appropriate to compensate the plaintiff for his pain and suffering, loss of vision, and the permanent impact on his daily life.

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[80] Based on the evidence presented, the court concludes that the plaintiff has suffered a permanent and significant injury to his right eye, resulting in a 75% to 80% loss of vision. Taking into account the medical evidence, the plaintiff's testimony, and comparable case law, the court awards the plaintiff general damages of RM80,000.

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[81] This sum takes into account the pain and suffering endured by the plaintiff, the permanent loss of vision, and the impact this has had on his quality of life which reflects the seriousness of the plaintiff's injury, the ongoing consequences of living with glaucoma, and the permanent nature of his disability. The court is satisfied that this award is fair and reasonable, given the severity of the injury and its lasting impact on the plaintiff's life.

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Special Damages

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[82] The plaintiff claims special damages for future medical costs, specifically for the ongoing treatment of glaucoma, which he developed as a result of the injury sustained to his right eye. The plaintiff contends that he will incur expenses for glaucoma medication, which costs approximately RM200 per month in the private sector. He estimates the total cost of treatment by considering his life expectancy, arguing that a sum of RM28,800 should be awarded as special damages for future medical expenses.

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[83] The defendants, however, dispute the plaintiff's claim on the grounds that no evidence has been adduced to support the necessity of private treatment or that the plaintiff has actually incurred such costs. Furthermore, the defendants argue that glaucoma medication is provided free of charge in Government hospitals, and thus, the plaintiff's claim for future medical expenses is speculative.

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[84] It is a well-established principle of law that special damages must be specifically pleaded and strictly proven. Special damages must be quantified and substantiated by the plaintiff, and the court may only award special damages where there is clear evidence of the actual loss incurred or likely to be incurred. The case of *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd* [1995] 1 CLJ 15 emphasised the need for exactitude in proving special damages, given that they represent actual monetary losses.

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[85] Special damages are intended to compensate the plaintiff for out-of-pocket expenses arising from the defendant's wrongful conduct, and they typically cover medical bills, loss of earnings, and other related expenses. In the case of *Ishak Hj Omar v. Government Of Malaysia*, the court emphasised that special damages for future medical costs may be awarded where the plaintiff can prove, on a balance of probabilities, that such costs will be incurred.

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- A [86] The plaintiff's claim for future medical costs is based on the assertion that he will need ongoing glaucoma treatment for the rest of his life. Glaucoma, being a permanent condition, requires regular medication to prevent further deterioration of vision. The plaintiff has submitted that the cost of medication in the private sector is RM200 per month, and he has
- B calculated the total amount by considering his life expectancy of 72 years. The plaintiff, at 36 years old, seeks an award for one-third of the cost, amounting to RM28,800.
- C [87] However, upon closer examination of the evidence, it is noted that the plaintiff has not produced any receipts or medical bills to show that he has been paying for glaucoma medication in the private sector. Additionally, no medical expert has testified to confirm that private treatment is necessary, or that the plaintiff is unable to obtain the required medication from Government hospitals. As such, the claim for future medical costs remains unsubstantiated.
- D [88] Special damages must be supported by credible evidence, such as medical reports or receipts, demonstrating that the plaintiff will likely incur future medical expenses. The absence of such evidence in the present case undermines the plaintiff's claim.
- E [89] The defendants have argued that the plaintiff is entitled to free medical care at Government hospitals, including the provision of glaucoma medication. This assertion is not disputed by the plaintiff, who acknowledges that he has access to free treatment through the Government healthcare system. However, the plaintiff argues that he should be compensated in anticipation of any future changes or limitations in the availability of free
- F medication.
- G [90] The court finds this argument to be speculative and not supported by any evidence. Special damages cannot be awarded based on conjecture or hypothetical future events. The plaintiff must prove with certainty that such costs will be incurred, and the court cannot make awards based on speculative concerns about potential future changes in government policy.
- H [91] Having considered the plaintiff's claim and the legal principles governing special damages, the court concludes that the plaintiff has failed to discharge the burden of proving his entitlement to special damages for future medical costs. No evidence has been presented to demonstrate that the plaintiff has incurred or will incur such expenses, nor has any expert testimony been provided to support the necessity of private treatment.
- I [92] Furthermore, the availability of free medical care through Government hospitals, which is not disputed, negates the need for the plaintiff to incur expenses in the private sector. The plaintiff's concern about potential future changes in Government policy is speculative and cannot form the basis for an award of special damages.

[93] In light of the above, the plaintiff's claim for special damages in the sum of RM28,800 for future medical costs is dismissed. The court finds that no award for future medical expenses is warranted in this case, as the plaintiff has failed to substantiate the claim with credible evidence.

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Aggravated Damages

[94] The plaintiff seeks an award of RM100,000 in aggravated damages, claiming that the defendants' conduct in delaying medical treatment caused additional suffering and distress. The plaintiff argues that the defendants' actions were not only negligent but also exhibited a lack of concern for his well-being, particularly by failing to provide prompt and adequate medical care after the injury occurred. Aggravated damages are claimed as compensation for the additional hurt caused by the defendants' conduct.

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[95] The defendants, in their defence, deny that their conduct warrants aggravated damages. They argue that the delay in medical treatment, while unfortunate, was not intentional or malicious, and therefore does not meet the threshold for an award of aggravated damages.

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[96] Aggravated damages are awarded in tort cases where the defendant's conduct has caused additional distress, humiliation, or injury to the plaintiff, beyond the direct consequences of the wrongful act. Unlike general damages, which compensate for pain and suffering arising directly from the injury, aggravated damages focus on the mental and emotional impact caused by the defendant's conduct.

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[97] In *Rookes v. Barnard* [1964] AC 1129, the House of Lords established that aggravated damages may be awarded when the defendant's conduct is oppressive, high-handed, or malicious, and it causes the plaintiff further distress beyond that arising from the actual harm. Malaysian courts have adopted this principle, recognising that aggravated damages are appropriate where the defendant's actions exacerbate the plaintiff's suffering.

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[98] Aggravated damages are compensatory in nature, but they aim to account for the additional hurt caused by the defendant's manner of acting. This may include conduct that is insulting, humiliating, or demonstrates a reckless disregard for the plaintiff's dignity.

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[99] In this case, the plaintiff alleges that after sustaining the injury to his right eye on 30 April 2019, the defendants failed to provide timely and proper medical care. The plaintiff was initially treated at the prison clinic, where he was attended by an assistant medical officer, but no further immediate action was taken. Despite the seriousness of the injury and the plaintiff's pain, he was not taken to the hospital until 2 May 2019, two days after the incident. Furthermore, due to a failure to prepare the plaintiff for surgery, the operation to treat his eye injury was delayed until 3 May 2019.

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- A [100] The plaintiff contends that this delay in treatment, along with the decision to return him to a normal prison cell post-surgery without patient-friendly facilities, caused further injury when he slipped and fell, aggravating his eye condition. The plaintiff claims that these actions reflect a callous disregard for his health and well-being, warranting an award of aggravated damages.
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- C [101] The evidence clearly shows that there was a delay in providing the plaintiff with the necessary medical treatment. The fact that the plaintiff, who had sustained a serious eye injury, was not taken to a specialised eye clinic immediately, and had to wait two days before being sent to the hospital, is troubling. Additionally, the failure to prepare him for surgery on 2 May 2019, which resulted in a further delay until the next day, indicates a lack of urgency in dealing with the plaintiff's condition.
- D [102] The plaintiff testified that during this delay, he experienced severe pain, distress, and helplessness. He made several requests for medical treatment, which were ignored or inadequately addressed by prison officials. The court finds that there is substantial evidence to support this claim, particularly in light of the fact that the plaintiff was initially treated with only eye drops and returned to his cell, despite having shards of glass embedded in his eye.
- E [103] In *Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor* [2018] 3 CLJ 427, the court held that aggravated damages may be awarded when the defendant's conduct is not only negligent but exhibits a lack of care or concern that exacerbates the plaintiff's distress. In this case, the defendants' conduct, particularly the decision to send the plaintiff back to a
- F regular prison cell with inadequate facilities after his surgery, suggests an indifference to his post-surgery recovery. This resulted in the plaintiff falling and sustaining further injury to his already damaged eye.
- G [104] The conduct of the defendants, particularly the prison authorities, demonstrated a callous disregard for the plaintiff's well-being. The prison medical staff were either grossly negligent in their duty to assess the seriousness of the plaintiff's injuries, or they failed to act promptly and appropriately in light of the visible trauma the plaintiff had sustained. The evidence indicates that the delay in providing the plaintiff with proper medical care was entirely avoidable.
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- I [105] After the plaintiff's first surgery on 3 May 2019, his care was again grossly inadequate. Despite the severity of his condition, he was returned to a standard prison cell without the necessary accommodations for his recovery. As a result, the plaintiff fell and sustained further injuries, which exacerbated his post-operative complications and necessitated a second surgery in June 2019.

[106] The evidence also reveals the psychological toll on the plaintiff, who has been left with a permanent disability that has had a profound impact on his quality of life. The plaintiff described feelings of despair, humiliation, and frustration as a result of his mistreatment and the long-term effects of his injury.

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[107] The defendants, in their defence, argued that the medical treatment provided to the plaintiff was adequate under the circumstances and that the delays in treatment were not intentional. However, the court finds that this argument is not supported by the evidence. The plaintiff's injury was visible, serious, and required immediate specialised attention, which was not provided until two days later. The defendants failed in their duty of care to ensure timely and proper medical attention.

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[108] The court finds that the plaintiff is entitled to aggravated damages. The defendants' actions or more precisely, their inaction significantly exacerbated the plaintiff's suffering. The delay in providing appropriate medical care, the inadequate post-surgical treatment, and the dismissive attitude of prison staff caused the plaintiff to experience additional physical pain and emotional distress that could have been avoided.

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[109] Aggravated damages are particularly warranted given the nature of the plaintiff's injuries. A delay in treating a severe eye injury such as the one sustained by the plaintiff is not only negligent but shows a blatant disregard for his health and safety. The prison officials had a duty of care to provide timely and proper medical treatment, and their failure to do so added to the plaintiff's suffering.

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[110] The court has taken into account the nature of the injury, the pain and suffering endured by the plaintiff, and the indifference displayed by the defendants in deciding the appropriate quantum of aggravated damages. In light of the egregious nature of the defendants' conduct, an award of RM80,000 is appropriate as aggravated damages to reflect the additional distress and suffering caused by the defendants.

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[111] This award serves not only to compensate the plaintiff for the increased harm but also to underline the court's disapproval of the defendants' conduct. The plaintiff was entitled to humane treatment, even as a prisoner, and the defendants failed in their obligations to provide such treatment.

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Exemplary Damages

[112] The plaintiff seeks an award of RM100,000.00 in exemplary damages, claiming that the defendants' conduct, particularly their failure to promptly and adequately provide medical treatment after the incident, was reckless and exhibited a disregard for the safety and well-being of a prisoner. The plaintiff argues that the delay in medical attention, the substandard care, and

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- A the failure to protect his rights justify an award of exemplary damages as a means of punishing the defendants and deterring similar conduct in the future.
- B [113] The defendants, on the other hand, argue that exemplary damages are punitive in nature and should only be awarded in cases where the conduct of the wrongdoer is so egregious as to warrant punishment. They contend that their actions, while perhaps negligent, do not rise to the level of intentional or outrageous conduct necessary to justify an award of exemplary damages.
- C [114] Exemplary damages, also known as punitive damages, are awarded not as compensation to the plaintiff, but to punish the defendant for particularly outrageous or oppressive conduct and to deter similar behaviour in the future. The concept of exemplary damages has been explained by this court in *Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal* [2017] CLJU 500; [2017] 1 LNS 500; [2018] 1 MLJ 784:
- D [33] The exemplary damages or punitive damages – the two terms now regarded as interchangeable – are additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant’s tortious act, and to punish the defendant. Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, or where he has acted with a “contumelious disregard” for the right to the plaintiff. The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award may also have an important function in vindicating the rights of the plaintiff. (See *Rookes v. Barnard* [1964] 1 All ER 347; *A B v. Southwest Water Services* [1993] All ER 609; *Broome v. Cassell & Co* [1971] 2 QB 354, *Laksamana Realty Sdn Bhd v. Goh Eng Hwa and Another Appeal* [2005] 4 CLJ 871; [2006] 1 MLJ 675).
- E
- F [115] The principles governing the award of exemplary damages were established in *Rookes v. Barnard* [1964] AC 1129, where the House of Lords held that such damages may only be awarded in three categories of cases:
- G (i) where there has been oppressive, arbitrary, or unconstitutional action by servants of the Government;
- (ii) where the defendant’s conduct has been calculated to make a profit that exceeds the compensation payable to the plaintiff; and
- H (iii) where such damages are expressly authorised by statute.
- [116] James Foong J (as he then was) in *Roshairree Abd Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39 had set the guidelines for awarding exemplary damages:
- I While considering the request for exemplary damages, this Court must bear in mind that the objective for an award under this category is to punish the defendants, and to display the Court’s indignant attitude

towards the acts committed by the defendants. However, from the enlightening judgment of Lord Devlin in *Rookes v. Barnard* [1946] AC 1129, such damages must be restricted to situations where there are:

“... oppressive, arbitrary or unconstitutional action by the servants of the Government” or where “the defendant’s conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.”

[117] The Court of Appeal had in *Sambaga Valli KR Ponnusamy (supra)* explained with clarity that exemplary damages are not intended to compensate the plaintiff and are not recoverable as a matter of right in the following words:

... we would like to emphasise again that exemplary damages are not intended to compensate the plaintiff and are not recoverable as a matter of right. The amount of the exemplary damages award is left to the judge’s discretion and is determined by considering the character of the defendant’s misconduct, the nature and extension of the plaintiff’s injury and the means of the defendant. The quantum of exemplary damages to be awarded must be appropriate to the wrongdoing inflicted to the parties involved. Exemplary damages must not be uncontrolled or arbitrary; they must be of an amount that is the minimum necessary to achieve their purpose in the context of the particular case.

[118] The courts have recognised the limited circumstances under which exemplary damages can be awarded, especially in cases involving State actors. Exemplary damages should only be awarded where the conduct of the defendant is so outrageous that it demands punishment and deterrence, especially when the defendant is an agent of the Government.

[119] The plaintiff in this case argues that the conduct of the prison authorities, who are servants of the Government, was oppressive and arbitrary in nature. The plaintiff suffered a serious injury to his right eye on 30 April 2019 but was not taken to the hospital until 2 May 2019. Even after being taken to the hospital, the surgery to treat his injury was delayed until 3 May 2019 due to the failure to properly prepare him for the operation. Furthermore, the plaintiff was returned to a normal prison cell after surgery, where he subsequently fell and aggravated his eye injury, leading to a second surgery on 20 June 2019.

[120] The delay in providing medical treatment, the failure to take the plaintiff to a specialised eye clinic immediately, and the decision to place him back in a regular prison cell after surgery all point to a lack of regard for the plaintiff’s safety and well-being. The plaintiff contends that these actions demonstrate not only negligence but also a reckless disregard for his fundamental rights as a prisoner.

- A [121] The conduct of the defendants in the present case must be carefully examined to determine whether it meets the threshold for exemplary damages. While it is clear that there was a delay in providing medical treatment, there is no evidence to suggest that the defendants acted with malice or with the intention to harm the plaintiff. The delay appears to have
- B been the result of poor management and oversight rather than a deliberate attempt to mistreat the plaintiff.
- [122] For exemplary damages to be awarded, the conduct of the Government officials must be oppressive or high-handed. Negligence alone, without evidence of intentional or reckless disregard for the plaintiff's rights,
- C does not justify an award of exemplary damages. The conduct must be so egregious that it warrants punishment beyond ordinary compensatory damages.
- [123] Upon careful analysis, the court finds that while the defendants' conduct was undoubtedly negligent and resulted in serious consequences for
- D the plaintiff, it does not meet the high threshold required for exemplary damages. The evidence does not support the conclusion that the defendants acted with an oppressive or malicious intent, nor does it suggest that they engaged in arbitrary or unconstitutional actions that would warrant punishment.
- E [124] The defendants' failure to promptly seek appropriate medical care for the plaintiff was serious, but it was not accompanied by any intention to cause further harm or to profit from the situation, as required under *Rookes v. Barnard*. Furthermore, there is no statutory provision in Malaysian law that authorises the award of exemplary damages in cases such as this.
- F [125] In this case, while the defendants failed in their duty to provide adequate medical care to the plaintiff, their conduct does not rise to the level of oppression or recklessness that would justify an award of exemplary damages.
- G [126] For the reasons stated above, the court finds that the plaintiff's claim for exemplary damages is not justified. The defendants' conduct, though negligent, does not meet the legal standard for exemplary damages, as it was not oppressive, arbitrary, or malicious in nature. There is no evidence that the defendants acted with the intent to harm or to violate the plaintiff's rights
- H in a manner that warrants punishment beyond compensatory damages.
- [127] Therefore, the plaintiff's claim for RM100,000 in exemplary damages is dismissed. The court concludes that while the plaintiff is entitled to compensation for his injuries through general and special damages, the conduct of the defendants does not justify the imposition of exemplary
- I damages in this case.

Conclusion

[128] This case has presented the court with significant and serious issues surrounding the actions and responsibilities of the defendants in relation to the plaintiff's treatment and well-being following an incident that caused substantial injury to the plaintiff's eye. Throughout the proceedings, the court has endeavoured to carefully analyse the evidence presented, the legal principles applicable, and the arguments put forth by both parties.

[129] In conclusion, the court finds in favour of the plaintiff on the issues of negligence and vicarious liability, awarding him a total sum of RM80,000 for general damages and a further sum of RM80,000 for aggravated damages. However, the plaintiff's claims for special damages, and exemplary damages are dismissed.

[130] The court emphasises the importance of accountability within the prison system and the necessity for reform to prevent similar incidents in the future. The treatment received by the plaintiff is not merely a failure of individual care but reflects systemic issues within the prison medical framework that must be addressed to safeguard the rights and welfare of individuals in custody.

[131] The court hereby orders that the defendants pay the awarded sum to the plaintiff and emphasises the significance of accountability in matters relating to the treatment of prisoners. Justice must prevail, not only through compensation for harm suffered but also through the implementation of measures to prevent future occurrences of negligence and violations of fundamental rights.

[132] The court wishes to stress that all parties involved must reflect on the necessity of their roles in upholding justice and the welfare of those in their charge. The implications of neglect in this context extend beyond the individual to affect the broader societal trust in the correctional system.

[133] Thus, the judgment is made in favour of the plaintiff with costs of RM80,000 emphasising the imperative for ongoing reform and vigilance in the treatment of all individuals under State custody.

[134] The defendants are jointly and severally liable to pay the total sum awarded together with costs of this action to the plaintiff.

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